

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PIONEER MASONRY RESTORATION
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-12

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for dust emissions allegedly in violation of respondent's Regulation I (Sections 9.03(b) and 9.15(b)), was heard by the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, in Seattle, Washington on March 27, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Pioneer Masonry Restoration Company, Inc. was represented by its Vice-President, Watson R. Vaughn. Respondent was represented by its attorney, Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this
7 Hearings Board a certified copy of its Regulation I containing
8 respondent's regulations and amendments thereto of which official
9 notice is taken.

10 II

11 On January 11, 1978, appellant, a masonry restoration firm, caused
12 dust emissions of 50 to 100 percent opacity for at least seven minutes
13 within a one hour period. The emissions resulted from the use of an
14 electrically-powered circular saw to remove mortar from a brick wall,
15 during repair and restoration of the Morrison Hotel at Third
16 and James Streets in Seattle, Washington. Although the brick had been
17 watered down on the previous day, the quantity of dust emitted was
18 sufficient to become airborne and travel at least 100 feet from the
19 work site before dispersing. Appellant received two Notices of
20 Violations shortly after the above events transpired. Appellant there-
21 after received two Notices and Orders of Civil Penalty, Nos. 3669 (Section
22 9.15(b)) and 3670 (Section 9.03(b)), each of which assessed a civil
23 penalty in the amount of \$250. Appellant appeals from these penalties.

24 III

25 The future of building restoration work is called into question
26 by the assessment of these penalties for dust emissions. The dust

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1 emissions might be abated by draping the workmen's scaffold with
2 tarpaulins. Yet this may violate workmen's safety standards, and raises
3 the danger that winds will grip the tarpaulins and twist the scaffold.
4 These dust emissions might be abated by watering down the wall while
5 the electric saw is operating. Yet this may violate safety standards,
6 and raises the danger of electrical shock. These dust emissions might
7 be abated by using air-driven hammers, rather than electrical saws, in
8 conjunction with watering down the walls. Yet air-driven hammers may be
9 expected to violate noise control ordinances adopted by the City of
10 Seattle. These dust emissions might be abated if old mortar joints could
11 be made strong again by some other process than sawing them down and
12 refilling. Yet such a process has not yet been discovered.

13 Thus if building restoration work is to continue, the one performing
14 the mortar restoration may be forced to choose between violations of
15 safety, noise or air pollution regulations. Yet the prospects for safety,
16 noise and air pollution may all worsen if buildings must crumble or be
17 demolished because they cannot be restored.

18 IV

19 Any Conclusion of Law hereinafter recited which should be deemed
20 a Finding of Fact is hereby adopted as such.

21 From these Findings the Pollution Control Hearings Board comes
22 to these

23 CONCLUSIONS OF LAW

24 I

25 In emitting an air contaminant, dust, for more than three minutes
26 in any one hour, which contaminant is of an opacity obscuring an

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observer's view to a degree equal to or greater than does smoke
designated No. 1 on the Ringelmann Chart, appellant violated Section
9.03(b) of respondent's Regulation I.

Section 9.15(b) of respondent's Regulation I provides:

It shall be unlawful for any person to cause or permit a
building or its appurtenances or a road to be constructed, altered,
repaired or demolished without taking reasonable precautions to
prevent particulate matter from becoming airborne.

Appellant took all reasonable precautions to prevent particulate matter
from becoming airborne, and therefore did not violate Section 9.15(b).

II

On November 22, 1977, this Hearings Board issued an Order in
PCHB No. 77-113 involving the same parties and a similar dust emission.
The penalty in that matter was suspended upon condition that appellant
file its application for a variance with respondent. Although appellant
did so, its Vice President testified that he was advised by respondent's
staff that the application was without merit in that it sought a variance
for mortar sawing work, generally, and not such work at a specific
location. This interpretation appears to be at odds with Article 7
of respondent's Regulation I which speaks of a variance application
for a "process" or "equipment" as well as a plant, building or structure.
(Article 7 further would allow "a group of persons who owns or controls
like processes or like equipment" to apply for a variance.) Appellant
is therefore entitled to address respondent's Board of Directors under
the procedure of Article 7 and is entitled to the Board of Directors'
decision on whether its situation meets the variance criteria of
Article 7.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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III

Because appellant has taken the action of applying for a variance, and because in this matter appellant took all reasonable precautions to prevent dust from becoming airborne, the penalty relating to violation of Section 9.03(b) (opacity) should be affirmed but suspended on condition that appellant take the steps necessary to revive his variance application or reapply for a variance within thirty days.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board makes this

ORDER

The violation and \$250 civil penalty imposed by Notice and Order of Civil Penalty No. 3669 (Section 9.15(b)) is hereby vacated. The violation and \$250 civil penalty imposed by Notice and Order of Civil Penalty No. 3670 (Section 9.03(b)) is hereby affirmed; provided, however, that the entire penalty is suspended on condition that appellant take the steps necessary to revive his variance application or reapply for a variance, in substantial compliance with Article 7 of respondent's Regulation I, within thirty days from the date of appellant's receipt of this Order.

DATED this 10th day of April, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member

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